



STATE OF LOUISIANA
DEPARTMENT OF STATE CIVIL SERVICE
LOUISIANA BOARD OF ETHICS
P. O. BOX 4368
BATON ROUGE, LA 70821
(225) 219-5600
FAX: (225) 381-7271
1-800-842-6630
www.ethics.la.gov

April 27, 2017

Mr. Marshall Hevron
Adams and Reese, LLP
One Shell Square
701 Poydras Street, Suite 4500
New Orleans, Louisiana 70139

Re: **Louisiana Board of Ethics**
Docket No. 2017-294

Dear Mr. Hevron,

The Louisiana Board of Ethics, at its April 21, 2017, meeting, considered your request for an advisory opinion regarding the operation of a charter school by Discovery Health Sciences Foundation, Inc.

Discovery Health Sciences Foundation, Inc. (Discovery) recently leased a 19.9 acre parcel of land in the City of Kenner from the Jefferson Parish School Board and intends to build a charter school campus on the site. In order to address the financing concerns of lenders, Friends of Discovery Health Sciences Foundation, Inc. (Friends), a 501(c)(3) non-profit organization, was recently formed. Friends intends to sublease the property from Discovery, obtain financing, construct the school, and, ultimately, lease the property back to Discovery to operate the school.

In order to satisfy the IRS regulations on 501(c)(3) organizations, Discovery must demonstrate some level of control over Friends. Therefore, Discovery and Friends have created an arrangement whereby Friends has the sole authority to elect its five board members (Friends Board), but a majority of those members must also be Discovery board members (Discovery Board). You state that no compensation will be received by the board members of either entity.

WHETHER SECTION 1123(1) PROVIDES AN EXCEPTION FOR PROHIBITED PARTICIPATION

Since the two organizations will have overlapping board members, you seek an advisory opinion as to whether the exception in Section 1123(1) is applicable to allow the Discovery Board members to participate in transactions involving Friends while they also serve on the Friends Board.

The Board concluded, and instructed me to inform you, that the Code of Governmental Ethics would not prohibit a Discovery Board member from participating in transactions involving Discovery in which Friends may have a substantial economic interest as La. R.S. 42:1123(1) provides a narrow exception for public servants to participate in the affairs of non-profit educational and charitable organizations. La. R.S. 42:1112B(3) prohibits a public servant from participating in a transaction involving the governmental entity in which, to his actual knowledge, any person of which he is an officer, director, trustee,

partner, or employee has a substantial economic interest. However, La. R.S. 42:1123(1) allows a public servant to participate in the affairs of charitable, religious, non-profit educational, public service, civic organizations, and bona fide organized public volunteer fire departments when no compensation is received. Provided they remain non-compensated, the Discovery Board members are not prohibited from participating in transactions involving Friends while they also serve on the Friends Board.

WHETHER SECTION 1123(1) PROVIDES AN EXCEPTION FOR PROHIBITED CONTRACTS

The Board concluded, and instructed me to inform you, that the exception provided by La. R.S. 42:1123(1) applies only to acts of participation by public servants.

Further, the Board concluded, and instructed me to inform you, that the Discovery Board members are not prohibited from serving as members of the Friends Board, since such service is not compensated. La. R.S. 42:1111C(2)(d) prohibited a public servant from receiving any thing of economic value for or in consideration of services rendered, or to be rendered, to or for any person during his public service unless such services are neither performed for, nor compensated by, any person or from any officer, director, agent, or employee of such person, if the public servant knows or reasonably should know that such person has or is seeking to obtain contractual or other business or financial relationships with the public servant's agency, conducts operations or activities which are regulated by the public servant's agency, or has substantial economic interests which may be substantially affected by the performance or nonperformance of the public servant's official duty.

WHETHER DISCOVERY EMPLOYEES ARE PROHIBITED FROM PROVIDING NON-COMPENSATED SERVICES TO FRIENDS

You stated that Don Wheat is the Chief Financial Officer (CFO) of Discovery, while Amy Gray is the Director of Operations for Discovery. You ask whether these two Discovery employees may provide support services to Friends on a non-compensated basis.

The Board concluded, and instructed me to inform you that, the Code of Governmental Ethics would not prohibit Don Wheat and Amy Gray from providing services to Friends, while Friends has a contractual, financial, or business relationship with Discovery and at a time when Wheat and Gray are employed with Discovery, provided they are not compensated for those services. See La. R.S. 42:1111C(2)(d), above.

This advisory opinion is based solely on the facts as set forth herein. Changes to the facts as presented may result in a different application of the provisions of the Code of Governmental Ethics. The Board issues no opinion as to past conduct or as to laws other than the Code of Governmental Ethics. If you have any questions, please contact me at (800)842-6630 or (225)219-5600.

Sincerely,

LOUISIANA BOARD OF ETHICS

A handwritten signature in black ink, appearing to read "David M. Bordelon", written over a horizontal line.

David M. Bordelon
For the Board